

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: George Clifford Mastey
Taunya Marie Mastey,

Chapter 12
Case No. 17-33216 WJF

Debtors.

**NOTICE OF HEARING AND VERIFIED MOTION FOR
AUTHORITY TO USE CASH COLLATERAL**

TO: The parties in interest as specified in Local Rule 9013-3(a)(2):

1. George Clifford Mastey and Taunya Marie Mastey (the “Debtors”) move the Court for the relief requested below and give notice of hearing.
2. The Court will hold a hearing on the Debtors’ motion at 1:30 p.m. on January 30, 2018 in Courtroom 2B, United States Courthouse, 316 North Robert St., St. Paul, MN 55101, or as soon thereafter as counsel can be heard.
3. Any response to this Motion must be filed and served no later than January 25, 2018, pursuant to the applicable bankruptcy rules. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE DEBTORS’ MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing the Debtor’s chapter 12 case was filed on October 11, 2017 (the “Filing Date”). The case is now pending in this Court.
5. This motion arises under 11 U.S.C. §§105, 363, 364, and 1205, together with Bankruptcy Rule 4001. This Motion is filed under Bankruptcy Rules 4001, 6004, and 9014 and

Local Rules 2002, 4001-2, and 9013-1 to 9013-3. The Debtors request that this Court grant relief authorizing Debtors to use cash collateral. The grounds for this Motion are set forth below.

6. On the Filing Date, the Debtors filed a voluntary petition for relief pursuant to chapter 12 of title 11 of the United States Code (“Bankruptcy Code”). The Debtors are acting as debtors in possession pursuant to section 1204 of the Bankruptcy Code.

7. The Debtors’ primary business is to provide cattle feeding services and raise crops used in providing those services. The Debtors are also engaged in an excavation business. They operate their business in Foley, Minnesota.

8. As of the Petition Date, Debtors were indebted to United Minnesota Bank (“UMB”) in the amount of \$771,607 (“Prepetition Indebtedness”) under three separate loans:

- (a) Loan number 517749 with an outstanding balance of \$240,000;
- (b) Loan number 520221 with an outstanding balance of \$195,666, and
- (c) Loan number 190527 with an outstanding balance of \$335,941.00.

9. As of January 9, 2018, the amount of the Prepetition Indebtedness was \$797,523.79.

10. To secure the Prepetition Indebtedness, the Debtors granted UMB security interests, liens, and/or other interests in all of Debtors’ real and personal property (the “Prepetition Collateral”) pursuant to loan agreements, security agreements, and mortgages (the “Security Agreements”).

11. The approximate values of the Prepetition Collateral as of the Filing Date is \$1,155,250.00.

12. The Debtors seek authorization to use harvested crops and silage, as well as the proceeds from crop insurance payments received by the Debtors after the Petition Date, and the

proceeds recovered in adversary proceedings with United Prairie Bank and C&D Calf Ranch, which is cash collateral in which UMB claims an interest. United Prairie Bank also claims an interest in the proceeds at issue in the adversary proceeding.

13. The Debtors propose to use the cash collateral to operate a cattle raising operation during 2018.

(a) The Debtors will immediately upon authorization to use cash collateral purchase 120 stock cows, which will be cared for and fed by the Debtors and sold in April 2018.

(b) In April 2018, the Debtors will purchase 40 stock cows, which will be cared for and fed by the Debtors and sold in August 2018.

(c) In August 2018, the Debtors will purchase 40 stock cows, which will be cared for and fed by the Debtors and sold in December 2018.

(d) The Debtors will immediately upon authorization to use cash collateral purchase 90 dairy herd cattle, which will be cared for and fed by the Debtors and sold in December 2018 and January 2019.

14. The Debtors will use the cash collateral for expenses necessary to the cattle operations, including veterinarian fees, supplies, fuel, repairs, and labor. The Debtors also seek to use the cash collateral to fund a post-petition retainer to be paid to Debtors' counsel, Wentzell Law Office, PLLC. The Debtors' counsel intends to hold the retainer and apply the retainer to allowed fees and expenses as authorized by the Court.

15. Pursuant to Local Rule 4001-2, attached hereto are verified statements regarding (1) a calculation of the amount of debt secured by the cash collateral, (2) a description of the cash collateral and an estimate of the collateral's value on the petition date, the date of the hearing, and a description of the collateral and an estimate of the collateral's value throughout the

term of this bankruptcy case, and (3) the Debtor's cash flow statement.

16. To adequately protect UMB's prepetition interests, the Debtors propose to grant UMB a post-petition security interest of the same priority, dignity, and effect as its prepetition interest in the cattle purchased by Debtors as described in paragraph 13 above.

17. Furthermore, given the value of the Prepetition Collateral, UMB is over-secured and therefore it is adequately protected.

18. By making this Motion, the Debtors are not seeking to cross collateralize any pre-petition debt with post-petition collateral. The Debtors are not admitting the validity perfection or amount of any pre-petition secured claim or waiving any right with respect thereto. The relief sought does not grant a lien on the Debtors' avoidance claims or bankruptcy causes of action as enumerated under the Bankruptcy Code. This Motion does not propose to secure pre-petition debt with post-petition loans or otherwise attempt to roll a pre-petition obligation into a post-petition obligation. This Motion does not propose to prime any debt of the Debtors nor does this Motion provide automatic summary relief from the automatic stay to any creditor. The Debtors are simply proposing to use cash collateral to pay essential operating expenses.

19. The Debtors give notice that, if necessary, the Debtors and Ken Thiesen, Adult Farm Manager, may testify regarding the facts set out in this Motion.

WHEREFORE, the Debtors, through their undersigned attorney, respectfully move the Court for an Order granting the Debtors' Motion authorizing it to use collect and use cash collateral, and for such other and further relief as the Court may deem just and equitable.

Dated: January 15, 2018

WENTZELL LAW OFFICE, PLLC

/s/ Joseph A. Wentzell

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STATEMENT 1

DEBT SECURED BY CASH COLLATERAL

DEBTORS' LOCAL RULE 4001-2(a) STATEMENTS TO SUPPORT MOTION

1. Calculation of Amount of Debt Secured by Collateral:

United Minnesota Bank Loan Balances as of January 9, 2018:

Loan Number 520521:

Principal: \$225,827.22

Interest: \$7,525.09

Total: \$233,352.31

Loan Number 520524:

Principal: \$197,169.78

Interest: \$11,501.56

Total: \$208,721.34

Loan Number 190527:

Principal: \$334,928.90

Interest: \$19,521.24

Total: \$354,450.14

Combined Total: \$796,523.79

STATEMENT 2

DESCRIPTION AND VALUES OF CASH COLLATERAL

DEBTORS' LOCAL RULE 4001-2(a) STATEMENTS TO SUPPORT MOTION

2. Description of Collateral and Estimates of Value:

Cash Collateral:	10/11/17:	1/30/18:	12/31/18
Crop Insurance Payments	\$44,308	\$160,000	\$0
Corn, Hay, Silage	\$187,045	\$206,511	\$264,000
Adversary Proceeding Recovery:	\$60,000	\$60,000	\$60,000
Cattle	\$0	\$60,000	\$200,000

STATEMENT 3

DEBTORS' CASH FLOW

2018

George Mastey Cash Flow Plan: 2018 Cash Flow

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	Year 2018												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
CASH INFLOWS													
Beg cash bal	500	50118	30912	10253	111155	15863	39045	56227	88141	101938	45537	159167	500
Corn	-	-	-	-	-	-	-	-	-	-	150000	-	150000
Dairy Finish	-	-	-	-	-	-	-	-	-	-	-	110261	110261
Fin Cull Cow	-	-	-	129744	-	-	-	43248	-	-	-	43248	216240
Custom work													
Chopping	-	-	-	-	-	-	-	-	10000	10000	-	-	20000
Pat dividend	-	-	-	-	-	-	-	-	-	-	1448	-	1448
Cp insurance	158262	-	-	-	-	-	-	-	-	-	-	-	158262
Other farm													
Snow Plow	2000	2000	2000	-	-	-	-	-	-	-	2000	2000	10000
gravel/clean	-	-	-	-	-	5000	5000	5000	5000	5000	-	-	25000
Const income	-	-	-	44333	44333	44333	44333	44333	44333	-	-	-	256000
Total	2000	2000	2000	44333	44333	49333	49333	49333	49333	5000	2000	2000	301000
Contract Ivstck													
Charlie	58000	-	-	-	-	-	-	-	-	-	-	-	58000
Total inflow	218762	52118	32912	184330	155488	65197	88378	148808	147474	116938	198985	314677	1015711
CASH OUTFLOWS													
Seed	-	-	-	32620	-	-	-	-	-	-	-	-	32620
Fertilizer	-	-	-	-	32650	-	-	-	-	-	-	-	32650
Chemicals	-	-	-	-	24520	-	-	-	-	-	-	-	24520
Crop insur.	-	-	-	-	-	-	-	-	2000	-	8295	-	10295
Feeder Ivstck													
Dairy Finish	37800	-	-	-	-	-	-	-	-	-	-	37800	75600
Fin Cull Cow	92160	-	-	-	30720	-	-	30720	-	-	-	92160	245760
Total	129960	-	-	-	30720	-	-	30720	-	-	-	129960	321360
Purch. feed	2543	2543	2543	2543	1702	1702	1702	2123	1702	1702	1702	3825	26332
Veterinary	150	150	150	150	150	150	150	150	150	150	150	300	1950
Supplies	450	450	450	450	150	150	150	300	150	150	150	450	3450
L. Marketing	-	-	-	3600	-	-	-	1200	-	-	-	3450	8250
Fuel & oil													
Off Road Far	-	-	-	2026	2026	-	-	2026	-	2026	2026	2026	12154
Cost	3010	3010	3010	3010	3010	3010	3010	3010	3010	3010	3010	3010	36118
Total	3010	3010	3010	5036	5036	3010	3010	5036	3010	5036	5036	5036	48272
Repairs													
Farm	2627	2627	2627	2627	2627	2627	2627	2627	2627	2627	2627	2627	31519
Const	2460	2460	2460	2460	2460	2460	2460	2460	2460	2460	2460	2460	29523
Total	5087	5087	5087	5087	5087	5087	5087	5087	5087	5087	5087	5087	61042
Labor													
farm	-	-	1529	3059	3059	3059	3059	3059	3059	3059	1529	1529	26000
const	3104	3104	3104	6207	6207	6207	6207	6207	6207	6207	3104	3104	58970
Total	3104	3104	4633	9266	9266	9266	9266	9266	9266	9266	4633	4633	84970
Land rent	-	-	-	-	23558	-	-	-	-	-	23558	-	47115
Bldg leases													
Skidloader	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	12000
RE taxes	-	-	-	1638	-	-	-	-	-	-	1638	-	3276
Farm insur.													
Farm/cost	4240	-	-	4240	-	-	4240	-	-	4240	-	-	16960
Const	1760	-	-	1760	-	-	1760	-	-	1760	-	-	7040

George Masley Cash Flow Plan: 2018 Cash Flow

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	Year 2018												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total	6000	-	-	6000	-	-	6000	-	-	6000	-	-	24000
Utilities	619	619	619	619	619	619	619	619	619	619	619	619	7430
Misc.													
Misc FAm	208	208	208	208	208	208	208	208	208	208	208	208	2500
CONST MISC	1762	1762	1762	1762	1762	1762	1762	1762	1762	1762	1762	1762	21142
Total	1970	1970	1970	1970	1970	1970	1970	1970	1970	1970	1970	1970	23642
Living/Draw	3000	3000	3000	3000	3000	3000	3000	3000	3000	3000	3000	3000	36000
Min end bal	500	500	500	500	500	500	500	500	500	500	500	500	500
Tot. outflow	157392	21432	22962	73478	139928	26455	32455	60970	28455	58038	33780	159630	809675
Opr. surplus	61370	30686	9950	110852	15560	38742	55924	87838	119019	58900	165205	154847	206037

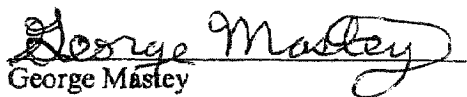
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VERIFICATION

George Mastey, one of the Debtors named in the foregoing pleading, declares under penalty of per jury that the facts, exhibits, and statements set forth in the preceding motion are true and correct according to the best of my knowledge.

January 12, 2018


George Mastey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: George Clifford Mastey
Taunya Marie Mastey,

Chapter 12
Case No. 17-33216 WJF

Debtors.

MEMORANDUM IN SUPPORT OF MOTION TO USE CASH COLLATERAL

George Clifford Mastey and Taunya Marie Mastey, (Hereinafter referred to as “Debtors”), hereby submit, in accordance with Local Rule 9013(a), their memorandum in support of their Motion for Use of Cash Collateral (the “Motion”). The supporting facts are set forth in the verified Motion.

ANALYSIS

The Bankruptcy Code provides that a debtor in possession may use cash collateral only with the secured creditor’s consent or if the court, after notice and hearing, authorizes such use. 11 U.S.C. § 362(c)(2). The Eighth Circuit Court of Appeals has identified the standards used in determining whether to authorize the use of cash collateral by a debtor in possession:

In any given case, the Bankruptcy Court must necessarily (1) establish the value of the secured creditor’s interest, (2) identify the risk to the secured creditor’s value resulting from the Debtor’s request for the use of cash collateral, and (3) determine whether the Debtor’s adequate protection proposal protects values as nearly as possible against risk to that value consistent with the concept of indubitable equivalence.

In re Martin, 761 F.2d 472, 476-77 (8th Cir. 1985).

Following this guidance, it is apparent that the Debtors’ request for the use of cash collateral protects UMB’s value and should be authorized.

(1) As of the Filing Date, the indebtedness owed to UMB is \$771,067, and as of the

date of this motion such indebtedness is \$797,523.79.

(2) The Debtors' request to use cash collateral does not pose any risk to UMB's value. The Debtors propose to use the cash collateral to continue feeding cattle as they have done in the past, except this time as the owners of cattle and not custom feeders. The value of the collateral should increase with the increase in the value of the cattle.

(3) The Debtors' adequate protection proposal protects UMB's value. UMB is oversecured. In addition, the Debtors propose to grant post-petition liens on cattle bought and sold as part of their feeding operation.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the Debtor's Motion should be granted, and the proposed order submitted in connection therewith entered.

Dated: January 15, 2018

WENTZELL LAW OFFICE, PLLC

/s/ Joseph A. Wentzell

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ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
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Case No. 17-33216 WJF

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 15, 2018 the following documents:

**NOTICE OF HEARING AND MOTION FOR ORDER AUTHORIZING THE USE OF
CASH COLLATERAL, MEMORANDUM OF LAW, AND PROPOSED ORDER**

were served electronically on all ECF filing participants.

Dated: January 15, 2018

/e/ James Moen
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612.436.3299

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: George Clifford Mastey
Taunya Marie Mastey,

Chapter 12
Case No. 17-33216 WJF

Debtors.

ORDER AUTHORIZING USE OF CASH COLLATERAL

The Motion of George Clifford Mastey and Taunya Marie Mastey (“Debtors”) for an Order granting use of cash collateral came on before the undersigned on January 30, 2018.

Appearances were noted on the record. The Debtors are seeking an order granting use of cash collateral.

IT IS HEREBY ORDERED THAT:

1. The Debtors’ Motion for use of cash collateral is granted. The Debtors are authorized to use cash collateral through December 31, 2018 in accordance with the cash flow analysis attached to the Motion as Statement 3 and the terms of this Order.
2. In addition to the existing rights and interests of United Minnesota Bank in the cash collateral, United Minnesota Bank shall have, a continuing lien and security interest in all cattle purchased by the Debtor in 2018 and proceeds from the sale of such cattle, to the same validity, extent, type, and priority as United Minnesota Bank has in its prepetition collateral.
3. United Minnesota Bank is required to endorse checks for crop insurance benefits currently in Debtors’ possession, and future checks from cattle sales that are addressed both to the Debtors and United Minnesota Bank.

Dated:

Judge of the US Bankruptcy Court